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Attorneys for Defendants
Stephen G. Berman, Joel M. Bennett, Michael G. Miller, Murray L. Skala, Robert E. Glick, Marvin Ellin, Leigh Anne Brodsky, Rex H. Poulsen, Peter F. Reilly, Dan Almagor and Nominal Defendant JAKKS Pacific, Inc.

[Counsel for Plaintiffs on Signature Page]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ADVANCED ADVISORS, G.P., *et al.*
Plaintiffs,
v.

CASE NO.: 2:14-01420-JAK
(SSx)

**JOINT REPORT PURSUANT
TO RULES 16(B) AND 26(F)**

STEPHEN BERMAN, an individual;
JOEL BENNETT, an individual;
MICHAEL G. MILLER, an individual;
MURRAY L. SKALA, an individual;
ROBERT E. GLICK; an individual;
MARVIN ELLIN, an individual;
LEIGH ANNE BRODSKY, an individual;
REX H. POULSEN, an individual; and
PETER F. REILLY, an individual,

Defendants.
and
JAKKS PACIFIC, INC.,
Nominal Defendant.

**JOINT REPORT PER ORDER SETTING RULE 16(B) SCHEDULING
CONFERENCE**

Plaintiffs and Defendants, consisting of Nominal Defendant JAKKS Pacific, Inc. (“JAKKS”), and Individual Defendants Messrs. Berman, Bennett, Miller, Skala, Glick, Ellin, Almagor, Poulsen and Reilly and Ms. Brodsky (collectively, “Defendants”) respectfully submit this Joint Report, in accordance with the Court's standing order. The filing of this plan does not constitute a waiver of Defendants' assertion that the stay provided under 15 U.S.C. § 78u-4(b)(3)(B), the Private Securities Litigation Reform Act ("the PSLRA") applies in whole or in part to this shareholder's derivative action.

a. Statement of the Case:

This is a derivative action brought on behalf of JAKKS Pacific, Inc. (“JAKKS Pacific” or the “Company”)—a toy company headquartered in Malibu California—alleging violations of Sections 10(b), SEC Rule 10b-5 thereunder and 14(a) of the Securities Exchange Act of 1934 as well as claims for breach of fiduciary duty.

On February 25, 2014, a complaint was filed in the Central District of California by Advanced Advisors, G.P. against the Company, nominally, and against Messrs. Berman, Bennett, Miller, Skala, Glick, Ellin, Almagor, Poulsen and Reilly and Ms. Brodsky (Advanced Partners, G.P., v. Berman, et al., CV14-1420 (DSF)). On March 6, 2014, a second shareholder derivative action alleging largely the same claims against the same defendants was filed in the Central District of California by Louisiana Municipal Police Employees Retirement System (Louisiana Municipal Police Employees Retirement System v. Berman et al., CV14-1670 (GAF)). On April 17, 2014, the cases were consolidated under Case No. 2:14-01420-JAK (SSx). On April 30, 2014, a consolidated amended complaint (“CAC”) was filed, which alleged claims against the Defendants for breach of fiduciary duty, for violation of the federal securities laws, and for contribution in connection with a related securities

1 class action (Melot v. JAKKS, Inc., et al., 13-cv-5388). Plaintiffs allege that the
 2 Defendants:

- 3
- 4 (1) Are liable for any damages associated with an \$80 million stock
 repurchase and rejection of Oaktree Capital Management's expression of
 5 interest in a buyout offer;
- 6 (2) Agreed to joint venture transactions with, Dr. Patrick Soon-Shiong ("Dr.
 Soon"), in order to allegedly entrench the incumbent directors, and permitted
 this investor to acquire a controlling stake in JAKKS at no premium;
- 7 (3) Disseminated proxy statements regarding Mr. Berman's compensation
 8 which did not fully and fairly describe the transactions with Dr. Soon and
 similar matters; and
- 9 (4) Are responsible for any payments incurred by JAKKS in connection with
 the Melot action.

10 Defendants dispute these allegations.

11 **b. Subject Matter Jurisdiction:**

12 The Court has federal-question subject-matter jurisdiction over this action
 13 pursuant to 28 U.S.C. § 1331 because Plaintiffs assert claims arising under the
 14 federal securities laws (Section 10(b) of the Exchange Act for contribution only, and
 15 Sections 14 and 21D of the Exchange Act, and SEC Rule 14a-9). In addition, the
 16 Court has diversity jurisdiction with respect to the consolidated LMPERS Action¹
 17 pursuant to 28 U.S.C. § 1332 because LMPERS is a citizen of the State of Louisiana
 18 and the defendants are all citizens of states other than Louisiana. The Court has
 19 supplemental jurisdiction over Plaintiffs' common-law claims under 28 U.S.C.
 20 § 1367.

21 **c. Legal Issues:**

22 Among the questions of law and fact at issue in this case are:

- 23 • Whether Plaintiffs are excused from making a demand on the JAKKS
 24 board related to its derivative claims under Del. Ch. Ct. R. 23.1;

26

27 ¹ Subject matter jurisdiction over each constituent complaint in a consolidated action
 28 is determined as of the time of each action's original filing, and regardless of the
 consolidation. See, e.g., Cont'l Airlines, Inc. v. Goodyear Tire & Rubber Co., 819
 F.2d 1519, 1523 n.1 (9th Cir. 1987).

- 1 • Whether any of Plaintiffs' claims are subject to the heightened scrutiny
- 2 of Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985);
- 3 • Whether certain business decisions by JAKKS represent defensive or
- 4 entrenching measures and, if so, were they reasonable in relation to the threat posed;
- 5 • Whether the proxy statements describing the transactions with Dr. Soon
- 6 and affiliated entities were materially misleading or incomplete;
- 7 • Whether the Defendants are liable for any damages incurred by the
- 8 Company in connection with the Melot action;
- 9 • Whether the case should be stayed pending the outcome of the Melot
- 10 action.

11 **d. Parties and Non-Party Witnesses:**

12 Defendants assert that the Ninth Circuit held that disclosures under Federal

13 Rule of Civil Procedure 26(a) (which include the names of individuals with

14 "discoverable information") are stayed by the PSLRA. Medhekar v. U.S. Dist. Court

15 for the N. Dist. Of Cal., 99 F.3d 325, 328 (9th Cir. 1996) ("Given the context and

16 legislative history of the Act, it appears that the term was intended to include

17 litigation activity relating to discovery which would certainly include

18 disclosures . . ."). Plaintiffs do not dispute that the PSLRA stay should apply to the

19 claims made under Section 10(b) of the Securities Exchange Act and the direct

20 claims under Section 14(a) of the Securities Act. However, it is Defendants' position

21 that the stay should apply to the entire complaint, including derivative claims, as

22 even Plaintiffs' cited case demonstrates: "The Ninth Circuit has not addressed

23 whether the PSLRA's discovery stay applies to derivative actions also asserting

24 federal securities law claims; in other words, whether 'any private action' includes

25 derivative actions. However, a number of courts of this district have now applied the

26 PSLRA discovery stay to derivative actions that do not include class claims." In re

27 Finisar Corp. Derivative Litig., C-06-07660 RMW, 2012 WL 609835, at *1 (N.D.

28 Cal. Feb. 24, 2012); Melzer v. CNET Networks, Inc., C 06-03817 WHA, 2006 WL

1 3716477, at *2 (N.D. Cal. Dec. 15, 2006) (enforcing PSLRA stay where “plaintiff’s
2 claims are based in part on the Securities Exchange Act of 1934”) (emphasis added);
3 In re Countrywide Fin. Corp. Derivative Litig., 542 F. Supp. 2d 1160, 1179 (C.D.
4 Cal. 2008) (“While no circuit court has addressed this issue, district courts have
5 frequently applied the PSLRA to stay discovery in shareholder derivative actions that
6 allege violations of federal law.”); In re Altera Corp Deriv. Litig., C 06-03447 JW,
7 2006 WL 2917578, at *1 (N.D. Cal. Oct. 11, 2006) (granting stay under PSLRA in
8 case that alleged “violations of the Securities Exchange Act and Rule 10b-5, breach
9 of fiduciary duty, and unjust enrichment”). Moreover, a stay of discovery is also
10 appropriate where demand has not yet been excused. In re Openwave Sys. Inc.
11 S’holder Derivative Litig., 503 F. Supp. 2d 1341, 1352-53 (N.D. Cal. 2007) (“This
12 Court agrees . . . that Rule 23.1 reflects a Congressional intent that derivative actions
13 pass certain hurdles before being allowed to proceed with the normal course of
14 litigation, including discovery. The Court therefore GRANTS defendants’ motion to
15 stay discovery until such time as plaintiffs are able to meet the requirements of Rule
16 23.1.”).

17 In light of this controlling law, it is Defendants’ position that the disclosure of
18 party and non-party witnesses is premature at this time. Defendants suggest if the
19 CAC were to be sustained by the Court, they shall promptly update this Joint
20 Discovery Case Management Plan.

21 Plaintiffs recognize that a number of cases within this Circuit have stayed
22 discovery in derivative actions pending the outcome of a motion to dismiss.
23 However, Plaintiffs assert that where a derivative case contains both federal and non-
24 federal claims, the Court may have discretion to permit discovery as to the non-
25 federal claims, as the Ninth Circuit has not squarely addressed the application of the
26 PSLRA to derivative claims. See In re Finisar Corp. Derivative Litig., No. C-06-
27 07660 RMW, 2012 U.S. Dist. LEXIS 23384, at *7 (N.D. Cal. Feb. 24, 2012)
28 (imposing stay but noting lack of binding Ninth Circuit authority as to this issue).

1 Plaintiffs believe that they could craft a limited set of discovery requests that would
2 not concern the federal claims raised in either their action, or in the pending
3 securities fraud class action, and should be permitted to do so.

4 For conflict purposes, a list of subsidiaries of Defendant JAKKS Pacific, Inc.
5 is attached as Exhibit B.

6 **e. Damages:**

7 Plaintiffs believe that the damages in this case cannot be calculated with
8 precision prior to discovery, but contend their alleged damages will be equal to at a
9 minimum: (1) the difference between the Company's fair value and the value of
10 Oaktree's premium offer that the Defendants rejected in 2012; (2) the funds
11 expended in the repurchase of shares in 2012; (3) the interest paid of the convertible
12 notes issued in 2013; and (4) the difference between the value paid to Dr. Soon and
13 affiliates as compared with what would have been paid in an arm's-length negotiated
14 transaction unaffected by the breaches alleged by Plaintiffs, and any ancillary
15 damages suffered by JAKKS as a consequence of these transactions. In addition to
16 these damages, Plaintiffs assert that the Director Defendants may be liable for any
17 sums JAKKS ultimately incurs in connection with the pending securities class action
18 against the Company.

19 Defendants do not believe that Plaintiffs will be able to establish any liability
20 or prove any damages at trial and further contend that Plaintiffs have not pled
21 sufficient injury or damage caused by any of the alleged claims or by any claim that
22 overcomes the exculpatory provision of JAKKS charter and 8 Del. Code § 102(b)(7)
23 thereby precluding any damages.

24 **f. Insurance:**

25 Defendant JAKKS Pacific, Inc. currently carries insurance that potentially
26 would cover certain claims at issue.

27 ///

1 **g. Motions (likelihood of motions seeking to add parties or claims, file**
 2 **amended pleadings or transfer venue.):**

3 Defendants anticipate filing a motion to dismiss or, in the alternative, stay this
 4 action on or before May 27, 2014. Defendants do not anticipate any other motions at
 5 this time but reserve their rights to file additional motions in the future.

6 In Plaintiffs' view, the pattern of conduct alleged in the Complaint is ongoing,
 7 and Plaintiffs anticipate that they may need to amend the pleadings to address future
 8 developments.

9 At this time, the Parties do not intend to add other parties or other causes of
 10 action. The Parties do not intend to seek a transfer of venue.

11 **h. Manual for Complex Litigation:**

12 At this time, the Parties do not believe that this case requires any particular
 13 procedures from the Manual for Complex Litigation.

14 **i. Status of Discovery:**

15 The Parties have thus far deferred discovery in light of the PSLRA stay, and it
 16 is Defendants' position that the stay should continue based on controlling Ninth
 17 Circuit law. However, as noted above, Plaintiffs ask the Court to exercise its
 18 discretion to allow Plaintiffs certain limited discovery. Plaintiffs propose that
 19 discovery be limited to, at this juncture, defendants' interactions with the activist
 20 investors and their contemporaneous discussions and analyses of what Plaintiffs have
 21 defined as "the Defensive Repurchase."

22 **k. Discovery Plan:**

23 Should any of Plaintiffs' claims eventually be sustained, the Parties have
 24 agreed to key discovery dates according to the schedule set out in Exhibit A.

25 **l. Discovery Cut-Off:**

26 Discovery deadlines are described in Exhibit A.

27

28

1 **m. Expert Discovery (proposed dates for expert witness disclosures,**
2 **etc.:**

3 Expert discovery deadlines are described in Exhibit A.

4 **n. Expert Discovery (a description of the issues or claims that any**
5 **party believes may be determined by motion for summary judgment or motion**
6 **in limine.):**

7 The Parties have not yet determined what issues may be the subject of expert
8 testimony, summary judgment or motions in limine.

9 **o. Settlement:**

10 The Parties believe that this matter may ultimately be resolved by a settlement
11 but, to date, have not engaged in significant settlement discussions. Pursuant to L.R.
12 16-15.2, the Parties agree that no later than forty-five days before the Final Pretrial
13 Conference, the Parties shall participate in an Alternative Dispute Resolution
14 (“ADR”) Procedure. The Parties have agreed that they will use a private mediator.

15 **p. Trial Estimate:**

16 The Parties estimate that trial in this matter will take two weeks. The parties
17 agree to a trial by jury on all claims so triable.

18 **q. Trial counsel:**

19 Plaintiffs’ Trial Counsel: Jeffrey C. Block and Laurence Paskowitz.

20 Defendants’ Trial Counsel: Peter B. Morrison, Jonathan J. Lerner and Maura
21 Barry Grinalds.

22 **r. Independent Expert or Master:**

23 This is not a case where the Court should appoint a Master pursuant to Rule 53
24 or an independent scientific expert.

25 **s. Timetable:**

26 Please see Exhibit A.

27

28

1 **t. Other issues:**

2 Service of pleadings, motions papers, and other filings through the Court's
3 ECF system should be treated as being the same as service by hand delivery for
4 purposes of the Federal Rules of Civil Procedure ("Federal Rules"). All other
5 papers, including discovery requests, objections, and responses, shall be served by
6 email, which will be deemed to be the equivalent of service by hand delivery for
7 purposes of the Federal Rules. Receipt of such papers by email shall be
8 acknowledged by a return email from the recipient.

9 **u. Patent cases:**

10 Not applicable.

11 **v. Magistrate Judge:**

12 The parties do not agree to trial before a magistrate judge. The parties take no
13 position at the present time regarding the selection of a Magistrate Judge for other
14 aspects or proceedings in this action.

15
16 Dated: May 23, 2014

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

17
18 By: _____ /s/ Peter B. Morrison

Peter B. Morrison
Attorneys for Defendants

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23 All other signatories listed, and on whose behalf the filing
24 is submitted, concur in the filing's content and have
25 authorized the filing.
26
27
28

1 Dated: May 23, 2014

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EXHIBIT A - SCHEDULE OF PRETRIAL AND TRIAL DATES**Case No: 2:14-01420-JAK (SSx)****Advanced Advisors, GP v. JAKKS, et al.**

Hearings/Deadlines	Plaintiffs' Request	Defendants' Request	Court Order
Jury Trial Duration Est. 2 weeks	May 12, 2105	March 1, 2016 9:00 a.m.	
Status Conference re Exhibits: (Friday at 3:00 p.m.) Friday before the trial date	May 8, 2015	February 26, 2016 3:00 p.m.	
Final Pretrial Conference: (Monday at 3:00 p.m.) 2 weeks before the trial	April 27, 2015	February 16, 2016 3:00 p.m.	
Last Date to Hear Motions (not file) [8 Weeks Before Trial]	March 16, 2015	January 5, 2016	
Expert Discovery Cutoff [8 Weeks Before Trial]	March 16, 2015	January 5, 2016	
Expert Disclosure Rebuttal [10 Weeks Before Trial]	March 2, 2015	December 22, 2015	
Expert Disclosure (Initial)	February 16, 2015	November 24, 2015	
Hearing on Motion to Dismiss		TBD	
Last Day to File Reply to MTD		August 11, 2014	
Last Day to File Opposition to Motion to Dismiss		July 11, 2014	
Last Day to File Motion To Dismiss		May 27, 2014	
Last Date to Amend Parties Add Pleadings	February 2, 2015	N/A	
Settlement Procedure Selection:			
(ADR-12 Form will be completed by Court) 1. Magistrate Judge 2. Attorney Settlement Officer	Outside ADR/Non-Judicial (Private)	Outside ADR/Non-Judicial (Private)	

1	Panel			
2	3. Outside			
3	ADR/Non-Judicial			
4	(Private)			
5	Last day to conduct	March 23, 2015	December 30 ,	
6	settlement		2015	
7	conference			
8	Post Mediation	April 6, 2015	January 4, 2016	
9	Status Conference:		1:30 pm	
10	(Monday at 1:30			
11	pm)			
12	Notice of Settlement	March 27, 2015	December 28,	
13	/ Joint Report re		2015	
14	Settlement			
15	(10 days before			
16	PMSC)			
17	Revised as			

Dated: May 23, 2014

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Peter B. Morrison

Peter B. Morrison

Jonathan Lerner

Maura Barry Grinalds

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All other signatories listed, and on whose behalf the filing
is submitted, concur in the filing's content and have
authorized the filing.

Dated: May 23, 2014

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EXHIBIT B

EXHIBIT 21

JAKKS PACIFIC, INC. SUBSIDIARIES

Subsidiary	Jurisdiction
JAKKS Pacific (HK) Limited	Hong Kong
JAKKS Pacific (Shenzhen) Company	China
JAKKS Pacific (Asia) Limited	Hong Kong
Play Along (Hong Kong) Limited	Hong Kong
Creative Designs International, Ltd.	Delaware
Arbor Toys Company Limited	Hong Kong
JAKKS Sales Corporation	Delaware
JAKKS Pacific (UK) Ltd.	United Kingdom
Disguise, Inc.	Delaware
Disguise Limited	Hong Kong
Kids Only, Inc.	Massachusetts
Kids Only Limited	Hong Kong
Tollytots Limited	Hong Kong
JAKKS Pacific (Canada), Inc.	Canada
JAKKS Pacific France, S.A.S.	France
JAKKS Pacific Iberia, S.L.	Spain